



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

June 23, 1993

Mr. Marcos Hernandez, Jr.
Criminal District Attorney
Hays County Courthouse
Room 208
San Marcos, Texas 78666

Letter Opinion No. 93-55

Re: Whether the Greater San Marcos Chamber of Commerce, the Greater San Marcos Economic Development Council, and the San Marcos Convention and Visitors Bureau are governmental bodies subject to the Texas Open Meetings Act, V.T.C.S. article 6252-17 (RQ-472)

Dear Mr. Hernandez:

You have asked us to determine whether the Greater San Marcos Chamber of Commerce (the "chamber of commerce"), the Greater San Marcos Economic Development Council (the "council"), and the San Marcos Convention and Visitors Bureau (the "bureau") are governmental bodies subject to the Texas Open Meetings Act (the "act"), V.T.C.S. article 6252-17. You state that none of these entities is a governmental agency, but each receives public funds and makes decisions affecting the economic well-being of the community.

You explain that the chamber of commerce consists primarily of local business people and merchants. The City of San Marcos (the "city") funds part of the chamber's budget,¹ but the chamber of commerce is funded primarily with funds from private sources. You explain that the council is a subdivision of the chamber of commerce. Apparently, the city has contracted with the chamber of commerce to administer an economic development program pursuant to section 380.001(a) of the Local Government Code. Under the contract, the chamber of commerce is to provide personnel, equipment, supplies, and vehicles for the administration of the economic development services, as well as office facilities at the chamber's building and utilities. The city council is to approve the council's budget.

You have advised that the bureau also is a subdivision of the chamber of commerce. The bureau is funded primarily by the city's hotel/motel tax. *See generally* Tax Code § 351.101. Section 351.101(a) of the Tax Code authorizes a municipality to use the revenues collected from a hotel occupancy tax for, among other things, encouraging, promoting, improving, and applying the arts, and historical and preservation

¹We note that the Texas Court of Civil Appeals has held, in *Kordus v. City of Garland*, that article III, section 52 and article XI, section 3 of the Texas Constitution prohibit a city from donating money to a chamber of commerce. *See Kordus v. City of Garland*, 561 S.W.2d 260, 261 (Tex. Civ. App.-Tyler 1978, writ ref'd n.r.e.).

projects. *See also id.* § 351.002. Under section 351.101(c), a municipality's governing body contractually may delegate to a person, including a private organization, the management and supervision of the programs chapter 351 authorizes. *Id.* § 351.101(c). Apparently, the city has contracted, pursuant to section 351.101(c) of the Tax Code, with the chamber of commerce to manage the bureau.

The act applies to a "governmental body" as section 1(c) of the act defines that term:

"Governmental body" means any board, commission, department, committee, or agency within the executive or legislative department of the state, which is under the direction of one or more elected or appointed members; and every Commissioners Court and city council in the state, and every deliberative body having rule-making or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city; and the board of trustees of every school district, and every county board of school trustees and county board of education; and every nonprofit corporation organized under . . . [V.T.C.S. article 1434a] that provides a water supply or wastewater service, or both, and is exempt from ad valorem taxation under Section 11.30, Tax Code; and the governing body of every special district heretofore or hereafter created by law.

V.T.C.S. art. 6252-17, § 1(c). This office has indicated in previous opinions that the act's definition of "governmental body" comprises four parts. *See* Attorney General Opinions JM-794 (1987) at 2; JM-340 (1985) at 2-3. The first part describes the state-level governmental entities that are subject to the act. Attorney General Opinions JM-794 at 2; JM-340 at 2-3. The remaining parts describe the specific local-level governmental entities that are subject to the act. *See* Attorney General Opinions JM-794 at 2; JM-340 at 3. For a local entity to be a "governmental body" within the meaning of section 1(c) of the act, one of the specific descriptions of local governmental bodies expressly must include it. *See* Attorney General Opinion JM-794 at 2.

None of the three organizations about which you ask is a state-level governmental entity. Nor are they school boards, either at the district or county level, or nonprofit corporations providing water supply or wastewater service. Additionally, based on your statement that none of these organizations is a governmental agency, none of them is a "deliberative body having rule-making or quasi-judicial power and classified as a department, agency, or political subdivision of a county or city." We note as well that the City of San Marcos does not appear to have delegated any rule-making or quasi-judicial power to any of the three organizations about which you inquire. We must determine, therefore, whether any of the three organizations is a "special district . . . created by law."

Clearly, the chamber of commerce is not created "by law." Furthermore, while specific statutes authorize the city to contract with a private entity to administer an


economic development program (see Local Gov't Code § 380.001(a)) and to manage a convention and tourism program (see Tax Code § 351.101), neither the council nor the bureau is created "by law." See Attorney General Opinion DM-7 (1991) at 3. Accordingly, neither is a special district, and hence a governmental body, subject to the act. Because the applicability of the act depends on a detailed analysis of the composition and function of the entity at issue (see Attorney General Opinion JM-1185 (1990) at 3), we limit our answer to the specific entities about which you have inquired.

We note, however, that while these entities are not subject to the Open Meetings Act, they may be subject to the Open Records Act to the extent that they receive public funds. The Open Meetings Act and the Open Records Act define "governmental body" differently. Notably, the Open Records Act includes in its definition of "governmental body" "the part, section, or portion of every organization, corporation, commission, committee, institution, or agency which is supported in whole or in part by public funds, or which expends public funds." V.T.C.S. art. 6252-17a, § 2(1)(G). See generally Open Records Decision No. 228 (1979) (distinguishing organizations that receive public funds in return for specific goods or services). You have told us that each of these three organizations receives public funds, although they also may be funded in part by private monies. To the extent that an organization receives funds from a governmental body (and such funds do not constitute a *quid pro quo*), it is subject to the Open Records Act. The Open Meetings Act, however, does not include a comparable provision. See Attorney General Opinion JM-596 (1986) at 4. Thus, the fact that an organization receives public funds does not necessarily mean that it is a governmental body for purposes of the Open Meetings Act. See Open Records Decision No. 563 (1990) at 4.

S U M M A R Y

Neither the Greater San Marcos Chamber of Commerce, the Greater San Marcos Economic Development Council, nor the San Marcos Convention and Visitors Bureau are governmental bodies subject to the Texas Open Meetings Act, V.T.C.S. article 6252-17.

Yours very truly,


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Opinion Committee